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MEMORANDUM

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TO: Docket Control

FROM: Ernest G. Johnson
Director
Utilities Division

EA for EGJ

DATE: September 7, 2004

RE: STAFF REPORT FOR ACCIPITER COMMUNICATIONS, INC.'S APPLICATION
TO EXTEND ITS CERTIFICATE OF CONVENIENCE AND NECESSITY IN
MARICOPA COUNTY (DOCKET NO. T-02847A-02-0641)

Attached is the Staff Report for Accipiter Communications, Inc.'s Application to extend its Certificate of Convenience and Necessity in Maricopa County. Staff recommends approval of the Application with conditions.

EGJ:RLB:red

Originator: Richard Boyles

Arizona Corporation Commission

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ACCIPITER COMMUNICATIONS, INC.

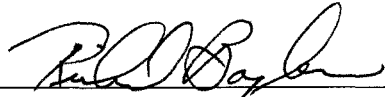
DOCKET NO. T-02847A-02-0641

**APPLICATION TO EXTEND ITS CERTIFICATE OF CONVENIENCE AND
NECESSITY IN MARICOPA COUNTY**

AUGUST 2004

STAFF ACKNOWLEDGMENT

The Staff Report for Accipiter Communications, Inc. (Docket No. T-02847A-02-0641) was the responsibility of the Staff member listed below. Richard Boyles was responsible for the review and analysis of the Company's Application.

A handwritten signature in cursive script, appearing to read "Richard Boyles", is written over a horizontal line.

Richard Boyles
Utilities Engineer—Telecommunications

EXECUTIVE SUMMARY
ACCIPITER COMMUNICATIONS, INC.
DOCKET NO. T-02847A-02-0641

Accipiter Communications, Inc. ("Accipiter") was granted a Certificate of Convenience and Necessity ("CC&N") by the Commission in Decision No. 59346 dated October 11, 1995, to provide local exchange carrier services in portions of Maricopa and Yavapai Counties, including Castle Hot Springs and Lake Pleasant Regional Park. At the time of the filing of this Application, Accipiter was providing services to approximately 78 customers with approximately 164 access lines.

Accipiter is seeking to extend its CC&N in Maricopa County to include that portion of the proposed master-planned development known as Lakeland Village/White Peak Ranch ("Extension Area")¹ which is not already included within its existing CC&N. The requested extension area is included in the Phoenix Metro service area map of Qwest Corporation ("Qwest"). Accipiter asserts, and Qwest agrees, that Qwest has no telecommunications facilities and no customers within the extension area.

Subsequent to Accipiter's Application, Qwest and Accipiter met to resolve their issues raised by the Application. Qwest has agreed to transfer the four (4) sections of its service area containing the extension area to Accipiter. Further, Qwest believes this transfer should be approved by the Commission.

Finally, Accipiter requests that the Commission authorize Accipiter to charge those rates and charges in the extension area that are contained in its tariffs on file with the Commission.

Staff determined that Cox Communications ("Cox") is presently serving customers in the extension area and has correctly assigned numbers from the 623 area code of the Phoenix local calling area. To insure these customers are not impacted by the transfer of the four sections from Qwest to Accipiter, Staff recommends that Accipiter create a new exchange for the four sections and that the new exchange remain in the 623 NPA and the Phoenix rate center. Therefore, Staff recommends that Accipiter's Application be approved with conditions.

¹ The Extension Area has subsequently become know as "Vistancia".

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I. Procedural History

On August 22, 2002, Accipiter Communications, Inc. ("Accipiter" or "the Company") filed an Application requesting extension of its Certificate of Convenience and Necessity ("CC&N") in Maricopa County.

On August 29, 2002, Qwest Corporation ("Qwest") filed a Motion for Leave to Intervene.

On December 17, 2002, Accipiter filed a letter stating it agreed "that the applicable time frames for determining sufficiency and for processing Accipiter's application as set forth in A.A.C. R14-2-510(E) would be tolled until such time as Accipiter and Qwest have had an opportunity to conclude their discussions, and if necessary, Accipiter has notified Commission staff that Accipiter intends to proceed with its application."

On December 22, 2003, Qwest filed a Response to Accipiter's Application ("Response"). In its Response, Qwest stated that it agreed to transfer the four sections which comprise the Extension Area to Accipiter.

On February 19, 2004, Qwest filed a letter requesting that Qwest's Motion to Intervene be granted.

On April 1, 2004, the Motion to Intervene filed by Qwest was granted.

On May 12, 2004, Accipiter filed an Amendment² to its Application which stated, in part, that the Company was amending the legal description of the requested extension area and requested "that the Commission proceed with the expeditious processing of its Application".

On June 10, 2004, Staff filed a Letter of Sufficiency on Accipiter's Application.

II. Background

Accipiter was granted a Certificate of Convenience and Necessity ("CC&N") by the Commission in Decision No. 59346 dated October 11, 1995, to provide local exchange carrier services in portions of Maricopa and Yavapai Counties, including Castle Hot Springs and Lake Pleasant Regional Park. At the time of the filing of this Application, Accipiter was providing services in its certificated area to approximately 78 customers with approximately 164 access lines.

Accipiter is seeking to extend its CC&N in Maricopa County to include that portion of the proposed master-planned development known as Lakeland Village/White Peak Ranch³ which is not already included within its existing CC&N (the "Extension Area"). That portion of the development is included in Qwest's Phoenix Metro service area map.

² Notice of Amendment of the Legal Description for the Requested Extension Area in Accipiter's Application to Extend Its CC&N ("Amendment").

³ The master-planned development has subsequently become known as "Vistancia".

The Vistancia⁴ development is located in the northwest portion of the Phoenix metropolitan area and is within the City of Peoria. "Vistancia consists of 7,100 acres, and at build-out will include more than 17,000 housing units, 820 acres dedicated to commercial, mixed use business park facilities, school sites, golf courses, parks and other amenities."⁵ The majority of the development is located within Accipiter's certificated service area; however, as already discussed, a portion lies within the four (4) sections of Qwest's service area which are the subject of the Accipiter's Application.

Accipiter asserts, and Qwest agrees, that Qwest has no telecommunications facilities and no customers within the extension area.

Subsequent to Accipiter's Application, Qwest and Accipiter met to resolve their issues raised by the Application. Qwest has agreed to transfer the four (4) sections of its service area containing the extension area to Accipiter.

III. Position of the Parties

A. Accipiter

Accipiter states that it has been contacted by Shea Homes, the developer of Vistancia who expressed a desire that the entire development be served by a single local exchange carrier. Accipiter further asserts that a single provider would eliminate customer confusion and inconvenience that would likely occur from bifurcating the development and that it would be more cost effective for the Company to provide service to the extension area since it would be providing service to the majority of the development.⁶

In its response to data request RLB 2-6, the Company states that public reports for the development would need to differentiate between the area that was served by Accipiter and what was served by Qwest, construction agreements would need to be negotiated by developers with two ILECs instead of one and that there may be a needless duplication of telecommunications infrastructure to serve the development.

The Company states that it intends to install state-of-the-art telecommunications facilities. For example, in its response to RLB 1-4, the Company asserts that it constructs facilities that employ "fiber-to-the-curb design combined with state-of-the-art carrier electronics capable of delivering a wide array of telephony and broadband services." Further, in a letter to Shea Homes dated June 8, 2002, The Company characterizes its network as one that combines state-of-the-art digital electronics with fiber-to-the curb connectivity and that is capable of delivering the full range of traditional telephone voice and high speed services as well as a variety of new broadband and video products.

⁴ Vistancia was referred to in the Company's initial Application as Lakeland Village/White Peak Ranch.

⁵ Amendment, Page 2, lines 11-13.

⁶ See Application, Section III, page 3.

Finally, the Company believes that its access to low-cost loans through the U.S. Department of Agriculture, Rural Utilities Service, would provide benefits to its customers. For the above stated reasons, Accipiter believes the public interest will be served by approval of its Application.

B. Qwest

In response to Staff discovery, Qwest stated that it did not have facilities of any type in the Extension Area⁷. Qwest also states that it would provide service to the Extension Area should Accipiter's Application not be approved and that it would provide service in the same manner as it does in the rest of its serving area⁸. Qwest also responded that it had engaged in discussion with Shea Homes regarding the provision of service in the Extension Area⁹. Qwest's initial position was that it intended to provide service to the area. However, Qwest subsequently revised its position and in its response to STF 01-002 states "there is a qualified, certified carrier that desires to provide service within this area and Qwest has made a business decision to agree to Accipiter's request."

On December 23, 2003, Qwest reiterated its position in its Response to Accipiter's Application. The Response, in general, states that 1) Qwest moved to intervene in this matter, 2) the four sections to be added to Accipiter's CC&N were located in Qwest service area, 3) Accipiter did not allege that Qwest was unwilling or unable to provide service to the area, 4) Qwest and Accipiter met to resolve issues raised by the Application and 5) Qwest had agreed to transfer the four sections of its service area to Accipiter. Qwest further states its belief that the transfer should be approved by the Commission.

IV. Staff Analysis and Recommendations

A. Staff Analysis

The Extension Area is physically located in the 623 NPA portion of the Phoenix rate center and is included in the Metro Phoenix local calling area. Although Accipiter's service area is located in the 928 NPA, Accipiter's exchange has two-way extended area service with Phoenix and thus, is part of the Metro Phoenix local calling area.

During its review of Accipiter's Application, Staff became aware that a competitive carrier, Cox Arizona Telecom, L.L.C. ("Cox"), was providing service in the Extension Area. Cox is assigning numbers from its available 623 numbering resources which is appropriate for the area and consistent with its obligations under federal and state rules.

A transfer of the Extension Area from Qwest to Accipiter raises rate center and numbering issues. To address these issues Cox and Accipiter, since they would both have

⁷ Response to STF 01-004.

⁸ Response to STF 01-002 and STF 01-003.

⁹ Response to STF 01-008.

customers in the Extension Area should the Application be approved, were asked to comment on four alternatives for the Extension Area. These were:

- a) The area code be changed to 928 and the rate center be Lake Pleasant.
- b) The area code remain 623 and a new rate center and exchange in the 623 NPA be established by Accipiter.
- c) The area code remain 623 and Accipiter establish a new exchange in the 623 NPA of the Phoenix rate center.
- d) Some other alternative.

Accipiter expressed a slight preference for "option b" but indicated it has the ability to implement any of the options. Accipiter also indicated that it thought "option b" was less likely to cause customer confusion. Accipiter offered no alternative for "option d".

Cox did not recommend a particular option. In regards to "option a", Cox expressed concern that existing Cox customers would be forced to take a new number in the 928 area code, absent some form of grandfathering of the existing numbers assigned to customers. With regards to "option b", Cox notes issues surrounding porting of numbers since numbering rules do not allow porting between rate centers. Cox did not identify particular issues with "option c" or make a recommendation for "option d".

Staff believes "option a" is problematic due to potential issues involving number changes, grandfathering of numbers and related customer confusion and/or costs. Staff believes "option b" is problematic due to issues relating to inefficient use of numbers (office codes are rate center specific), inability to port or pool numbers across rate centers and customer confusion (for example a number in the 623 NPA of Phoenix rate center could not be ported to the Accipiter 623 NPA rate center). Staff believes that "option c" would be the least problematic since there would appear to be no numbering issues and it should be less likely to cause customer confusion. In response to a subsequent data request, the Company stated its preference that the area remain in the 623 NPA, a new exchange be created in the Phoenix rate center as stated in "option c"¹⁰.

Accipiter and Qwest are both incumbent local exchange carriers and would need to build facilities to serve the Extension Area. Qwest would extend facilities from adjacent sections where the company is currently providing service. Similarly, Accipiter would extend its facilities from adjacent sections in its service area. It is Staff's understanding that end-user customers would not be subject to construction charges from either company. Accipiter's proposed fiber-to-the-curb network may be robust in terms of potential future service offerings. Staff is not aware of the type of network Qwest might construct since a design for the Extension Area had not yet been performed¹¹. The scope of local calling area would be the same with either service provider.

¹⁰ Response to RLB 3-10.

¹¹ Response to STF 3-001.

Within the Phoenix Metro area customers have a variety of service providers to choose from; incumbent LEC, competitive LEC, and wireless for example. While having two incumbent local exchange carriers providing service to different portions of the overall development might not necessarily be more complex or confusing from a customer perspective, Staff concurs with the Company that having one incumbent local exchange carrier could provide more clarity for customers.

Accipiter states that over a five year period the Company would invest approximately 5.1 million dollars to place new facilities in the Extension Area. The Company further states that it has RUS funds currently available for this construction. In addition, the Company states that it could begin offering service to customers within 120 days of a Commission Decision approving the transfer. This is comparable to the 180 days allowed by Qwest's Tariff.

B. Staff Recommendations and the Public Interest

In support of its Application, Accipiter believes that the following factors should be considered by the Commission: 1) having one ILEC with carrier-of-last-resort obligations serving the entire master planned development will lead to less customer confusion, 2) benefits derived from its state-of-the-art telecommunications facilities, 3) that it may be more cost effective for the company to be the service provider and 4) Accipiter's access to federally-guaranteed loans. Together, the Company believes that these are sufficient reasons to find the public interest will be served by grant of the requested CC&N transfer. Further, Qwest has agreed to the proposed transfer of the Extension Area to Accipiter. While Staff does not oppose the transfer, Staff believes it must also take into consideration the impact such a grant would have on Cox customers who are presently receiving service in the Extension Area.

In weighing Public Interest, Staff believes there are factors which relate to numbering that should be implemented as a condition of approval of the transfer of the Extension Area. Leaving the 623 area code and Phoenix rate center boundaries as they currently exist minimizes impacts on customers, continues to promote efficient use of numbering resources and does not reduce the opportunity for competition through the use of number portability. For these reasons, Staff recommends that transfer of the Extension Area from Qwest to Accipiter be approved subject to the following conditions.

- 1) Accipiter establish a new exchange for the Extension Area.
- 2) The new exchange be made part of the Phoenix rate center.
- 3) The area code for the Extension Area remain 623.
- 4) Accipiter request its NPA 623 numbers for the Extension Area at the thousands-block level from the national pooling administrator.

In addition, Staff makes the following additional recommendations.

- 5) Accipiter and Qwest update their respective Tariffs within thirty (30) days of a Commission Decision to reflect the transfer of service area.

- 6) Accipiter charge its existing rates and charges in the Extension Area until further Order of the Commission.

V. Conclusion

Staff is not aware of any customer opposition to Accipiter's Application. Staff recommends that the Commission find that Accipiter's Application to Extend Its Certificate of Convenience and Necessity is in the public interest. Staff further recommends that the Accipiter's Application to Extend Its Certificate of Convenience and Necessity be approved subject to the conditions discussed above.